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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CHRISTOPHER GARZA,

Plaintiff,

vs.

CITY OF SALEM, an Oregon municipal
corporation; and OFFICER DAVID BAKER,
an individual,

Defendants.

Case No. 3:22-cv-00721-HZ

PLAINTIFF'S TRIAL MEMORANDUM

On September 17, 2021, Christopher Garza and his friend, Hector Gonzalez-Nunez, were assisting a motorist with an overheating vehicle, who had driven into the parking lot of OK Tires because of the engine trouble. Mr. Garza was living in an RV on the property at that time, with permission of the owner, Mike Campbell.

Salem Police Officer Baker saw the three men working on the vehicle, activated his lights, and pulled into the parking lot. Officer Baker testified that the first thing he said was “Hi”; Mr. Garza testified that the first thing he said was “why are you stealing that car?”

Shortly thereafter, Officer Baker exercised force against Mr. Garza, forcing his arms behind his body to handcuff him against the hood of his squad car and placing him inside the car for approximately ten minutes. Part, but not all, of the encounter was captured by a surveillance camera, and the nature and amount of force used is disputed by the parties. Other members of the Salem Police arrived while Officer Baker was handcuffing Mr. Garza. The encounter ended when Officer Baker was satisfied that no theft had occurred, and all three men were released without charge.

Mr. Garza alleges shoulder injury, which required surgery and may require an additional surgery, as a result of Officer Baker’s use of force. The injury and extent of damages is disputed.

The plaintiff brought Fourth Amendment claims for both false arrest and excessive force via 42 USC §1983, along with state law claims for false arrest and battery. The Court dismissed the 4th Amendment false arrest claim on summary judgment. Plaintiff proceeds to trial on the remaining three claims. The Fourth Amendment excessive force claim proceeds against Officer Baker under §1983; both state law claims proceed against the City of Salem under the Oregon Tort Claims Act.

The parties agree that probable cause to make an arrest did not exist at any point during the encounter. The parties dispute whether Officer’s Baker’s conduct constituted an arrest under Oregon law.

The plaintiff will present the testimony of the individuals present during the encounter, as well as the testimony of Mike Campbell, and intends to play the video of the encounter for the jury. Plaintiff will also present qualified medical expert testimony as to physical injuries and

medical expenses, and three to four lay witnesses to testify as to the plaintiff's noneconomic damages they have observed. Plaintiff will also present testimony from a qualified police use of force expert.

Plaintiff seeks \$76,425.46 in medical expenses, and noneconomic damages and punitive damages in an amount to be determined by the jury.

DATED this 2nd day of October, 2023.

KAFOURY & MCDUGAL

/s/ Jason Kafoury

Jason Kafoury OSB# 091200
jkafoury@kafourymcdougal.com
Of Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PLAINTIFF'S TRIAL MEMORANDUM**
on the defendant(s) on the date indicated below by the following method:

- ☐ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery
- ☒ email

to said person(s) a true copy thereof, addressed to said persons at their last known address(es)
and facsimile number(s) as follows:

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Attorneys for Defendants

Dated this 2nd day of October, 2023.

KAFOURY & MCDOUGAL

/s/ Jason Kafoury

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Of Attorneys for Plaintiff